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OFFENCES CONCERNING THE PROTECTION OF THE ENVIRONMENT

ABSTRACT

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Key words: *environment, environment protection, fundamental right to a healthy and ecologically-balanced environment, criminal protection of the environmental law, criminal liability, offence, offences concerning the protection of the environment, offences on the safe deployment of nuclear activities, offences regarding waste management, offences provided in the Forest Code, offences regarding hunting and the protection of cynegetic fund, offences regarding the regime of natural protected areas, conservation of the natural habitats, wild flora and fauna, offences provided in Water Law, offences regarding fishing and aquaculture, offences regarding active interventions in the atmosphere, criminology of the environment, victimology of the environment, harmonizing the legislation in the matter of criminal protection of the environment, effectiveness of criminal protection of the environment*

CHAPTER I. THE NOTION OF ENVIRONMENT AND THE IMPORTANCE OF ENVIRONMENT PROTECTION

Over time, the term environment (*mediu, Umwelt, environnement*) has altered its meaning. The Romanian legislator inserted the definition of the environment in the Framework Law on the protection of the environment, Government Emergency Ordinance 195/2005 with subsequent amendments, "The environment is the set of natural conditions and elements of the Earth: air, water, ground, underground, landscape, all the atmospheric layers, all the organic and inorganic matter, as well as living beings, natural systems in their interaction, including the previous elements, including some material and spiritual values, the quality of life and the conditions that can affect human welfare and health".

Environment protection was defined as the conscious, scientifically founded human activity, oriented toward attaining a concrete goal: preventing pollution, maintaining and improving the standards of life on Earth.

The necessity of regulations in the field of environment protection is obvious, as long as the protection of the environment has represented "a vital problem of the contemporary world". In order to create an indispensable "ecological alphabetization", a genuine system of methods and techniques was created, meant to have a determining role in environment protection. Within these methods, along with the construction of new concepts meant to reorient the activity of environmental factors protection (as the situation of the concept of "sustainable development" or "integrated protection"), it is worth mentioning as follows: creating the environmental law as a distinct branch of international law, institutionalization of environment issues on various levels, the creation and legislative acknowledgement of a new fundamental human right – the right to a healthy environment, as a right of the third generation, the one of solidarity rights, the elaboration of coherent and effective environmental strategies and policies, and the creation of techniques specific to environmental law: preventive procedures, economic and fiscal key-elements, technical regulations, juridical liability for the acts that prejudice the environment.

CHAPTER II. INTERNATIONAL REGULATIONS ON THE PROTECTION OF THE ENVIRONMENT

The interaction between man and nature has existed since time immemorial, even before the emergence of State and of the law. The pre-law norms referring to the relation between man and nature may have represented the first form of regulating the rapports between people, alongside religious conscience elements, as well as the primitive customs concerning the relationship between people and the natural environment. According to certain estimates, nowadays there are tens of thousands of regulations on the protection of the environment, many of them based on the European or American model.

A very important role in the development of adequate mechanisms on environment protection is played by the Organization of the United Nations; during global conferences, the UN has adopted a series of international acts with major impact upon national legislations.

The most important documents in the matter are as follows: The Stockholm Declaration of 1972 the Action Plan for the Environment, The Rio de Janeiro Declaration, 1992, Agenda 21, and the Conventions adopted during the Rio Conference (The Framework Convention on Climate Change, Rio de Janeiro Convention on Biological Diversity), the Statement of Principles on Forests, The Convention to Combat Desertification, and The International Union for Conservation of Nature and Natural Resources (IUCN) of the International Environment Convention 2000, as well as the Johannesburg Declaration on Sustainable Development and the Implementation plan.

In its turn, the International Court of Justice – through the decisions pronounced on environment protection – stipulates the obligations of States in the contemporary world. In this sense, it is worth highlighting the conclusions of the Court in the Corfu Channel case, the Nuclear Tests case (New Zealand v France), Gabčíkovo – Nagymaros Project (Hungary v Slovakia). The efficiency of jurisdictional intervention is still tributary to the limited capacity of the intervention of this jurisdiction, subordinated of the sovereign will of States. The constitution of a genuine device of international jurisdictional norms – endowed with substantial competencies and means – and the admission of appeals of nongovernmental organizations (such as in the field of human rights) could make more efficient the application of norms concerning environment-related international liability.

CHAPTER III. COMMUNITY REGULATIONS ON THE PROTECTION OF THE ENVIRONMENT

Nowadays, environmental policy is one of the great political fields where Brussels plays an essential role. Irrespective of whether some of the Member States made great efforts to adjust to the legislation of European Union or other played, by tradition, a leading role in determining the agenda of the environment in the European Union, the impact of the Union on national policy of the Member States is significant. Whereas, in the 70s, many officials of the Commission viewed the environment as "the most fashionable issue, but least related to politics", it has currently become an important domain within the political portfolio of the European Union.

The Community policy in the field of the environment is encompassed in the so-called "accompanying" policies – denominated as such in order to underline their secondary role in relation to policies specific to the "unique market". The main criterion in the classification of Community policies is the size of allotted Community budget, but it cannot represent the unique criterion for a policy to be a priority, for at least two reasons: on one hand, a strong Community policy can be expressed mainly through texts and decisions and, on the other, the European Investment Bank allots funds for sectoral policies, thus compensating for budget contributions. At the same time, it is part of protection policies, alongside consumer protection and social protection, based on the idea that the European market is not only a space for growth, but also a space for protection, where we have to apply harmonized legislation. This legislation should provide to Community members a minimum set of guarantees against the risks entailed by modern society; the Member States have the possibility of consolidating these guarantees through more protecting national measures.

Besides the Treaties of the European Union – which acknowledge the environmental law and the need of protecting it as priority objective of the Union –, the European Convention on Human Rights and Fundamental Freedoms also ensures environment protection. However, the Convention intervenes incidentally, indirectly, for the protection of private and family life.

The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters regulates three procedural rights: access to environment-related information, public participation in decision-making on environment issues, and access to justice in environmental matters. This document provides important guarantees, because it recognizes that "every person has the right to live in an environment adequate to his of her health and well-being, […] for the benefit of present and future generations".

The matter of liability for ecological damage is regulated by the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment.

The important role of criminal law in the field of environment protection has been underlined internationally; the international preoccupation in the field led to the European Convention the Protection of the Environment through Criminal Law (Strasbourg, on 4 November 1998, within the European Council).

After the passing of the European Convention the Protection of the Environment through Criminal Law, many important regulatory documents in the matter of criminal protection of the environment have been passed at the European level. The Court of Justice of the European Union has ruled – through a directive – that the European Commission and Parliament European are entitled to impose to the Member States the obligation of punishing criminally the authors of offences committed against the environment. In this context, it is worth noting the Directive of the European Parliament and of the Council on the protection of the environment through criminal law 2008/99/EC and the Directive 2009/123/EC of 21

October 2009 amending the Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringement.

The Community and the Member States passed numerous regulatory documents on environment protection. However, diverse studies show that penalties currently applied in the Member States are not always enough for an efficient application of Community policy on the protection of the environment. Criminal penalties are not in effect in all the Member States for all the serious offences within the field of environment protection. Besides the fact that the type of penalties differs from one Member State to another, there are also significant differences concerning the level of penalties for similar or identical offences. Taking into account that offences against the environment often have a cross-border nature or effects, the issue of criminal liability for the infringement of norms on the protection of the environment must involve Community actions.

CHAPTER IV. ENVIRONMENT PROTECTION REGULATIONS IN NATIONAL LAW

Section 1. General considerations on the protection of the environment through criminal law within national law

In the field of the environment, fundamental institutions of criminal law acquire certain particularities, entailed by the specifics of this law branch; however, they do observe the general principles of criminal law. The entire criminal legislation within the field of environment protection is highly technical, but this character is justified by its specific.

In terms of criminal policy, two trends are noticeable, seemingly contradictory in terms of legislative evolution. The first trend concerns the elimination of certain types of offences that no longer present a high social danger. The second trend concerns regulating new offences, related to the technological development of the society: the offences related to computer science, money laundering, and environment.

National legislators used three methods for defining offences against the environment, depending on the relations between criminal documents and administrative law provisions. The Romanian legislator adopted the model of partial dependence on administrative norms; the regulations on the protection of the environment often concern infringements of administrative norms.

The environmental indictments included in the Government Emergency Ordinance No. 195/2005 on the protection of the environment and in numerous sectoral regulations concerning ecology, as well as the great dependence on the administrative regulations (insufficiently adapted to the particularities of the field), affect significantly the criminal intervention in environment protection. The legislative and theoretical approaches aim at formulating an autonomous indictment, fully adapted to the particularities of the environmental field. It is however worth mentioning a progress in the matter of crystallizing offences that are autonomous from the environment: the amendments and additions brought by Law No. 187/2012 to Law No. 535/2004 for the prevention and suppression of terrorism, which include the offence of ecological terrorism. Drafting clear and encompassing regulations – to replace the legislative abundance currently regulating this type of social relations, which makes it difficult to apply the law – is still a goal in the matter.

Section II: Environment protection through criminal law norms included in Romanian criminal codes

The criminal law of 1969 failed to include the offences against the protection of the environment within a special subdivision, such as the case of other types of offences. It includes, however, indictments – which ensure the protection, mostly as secondary legal subject – concerning the environment: non-compliance with the legal treatment of nuclear material or of other radioactive materials (Article 279^1 of the Criminal Code), non-compliance

with the legal treatment of explosives (Article 280 of the Criminal Code), and failure to comply with provisions on importing waste and residue (Article 302^2 of the Criminal Code). The document also includes offences related to this matter, such as spreading disease among animals or plants (Article 310 of the Criminal Code) and contamination of water (Article 311 of the Criminal Code).

Law 301/2004, the criminal law, a document that failed to inure, had dedicated a special chapter to environment protection, Chapter V – "Crimes and offences against the environment". The regulation per se does not represent a progress in the matter, because it only reprised existing regulations and inserted them into a distinct capitol of the Criminal code. The importance of this regulatory attempt remains that of including environment protection within the criminal law, of defining its specific, and of structuring more clearly the criminal approach in the matter.

In a similar manner to the Criminal code of 1969, Law 286/2009 (the new Criminal Code) comprises a series of offences that – though they do not regard mainly the environment protection – have indirect consequences in this field. Hence, it criminalises non-compliance with the legal treatment of nuclear material or of other radioactive materials (Article 345), non-compliance with the legal treatment of explosives (Article 346), spreading disease among animals or plants (Article 355), contamination of water (Article 356), and toxic products or substances trafficking (Article 359).

Concerning the relation between the new general criminal law and the Special laws, Law No. 187/2012 for the application of Law 286/2009 has the main objective of bringing into line the existing criminal legislation and the provisions of the new Criminal Code; it also amends the entire criminal legislation in the field of environment protection.

Section III. Emergence and evolution of legislation specific to environment protection in Romania

The emergence of the legislation specific to environment protection imposed a new regulating perspective, where environment protection represents the main legal subject. Law No. 9/1973, Law No. 137/1995, Government Emergency Ordinance 195/2005 and, later, Law 101/2011 established criminal measures for an effective protection of the environment.

A succinct analysis of legal provisions on the protection of the environment through criminal law indicates the existence of numerous offences in the matter. However, there is no effective systematisation of these offences. Because they are included within the same offence behaviour in several regulatory documents, some regulations overlap and there are cases of multiple offence for the same act. Another characteristic of criminal regulation in the matter is the use of incomplete norms, of blank norms. Many of the criminal norms refer to other texts of laws, which affect the quality and predictability of the text. In addition, the repeated and multiple legislative amendments in the field influence the efficiency of criminal penalties.

Beyond the downsides of criminalisation manner, a special issue is the effectiveness of criminal legislation. In the lack of special research bodies in the matter, of specialized courts, the application of criminal penalties for offences against the environment is a rarity.

CHAPTER V. OFFENCES CONCERNING THE PROTECTION OF THE ENVIRONMENT

Section 1. General characteristics of offences concerning the protection of the environment

The offences concerning the protection of the environment represent the offences – by omission or by commission – provided in Criminal law, committed in guilt and without justifying causes, through which the person alters the environment as a whole or its factors. We propose this definition of the offence concerning the protection of the environment, based on the definition of the offence included under Article 15 of the new Criminal Code: "An

offence is an act provided in the criminal law, committed in guilt, unjustified, and imputable to the wrongdoer. Offences are the only grounds for criminal liability", with subsequent stipulations. Concerning the unjustified character of the offence, we believe – alongside other authors – that it would have been better for it to be phrased as "inexistence of non-justifying cause", preferable to the phrasing used by the legislator: "unjustified".

The definition would have ensured the preservation of the terminology proposed by the legislator. Whereas articles 18-22 of the new Criminal Code regulate justifying causes as a circumstance for an act not to be considered an offence, the same terminology should have been used when defining the offence, for clarity reasons of the offence. In addition, we believe that the term "unjustified" may also have different meanings than those considered by the legislator, as the lack of grounds or reason, which determined the aforementioned conclusion.

Concerning the inclusion of imputability within the definition of offence, we believe it to be pleonastic, redundant. Hence, the legislator posits that an offence is an act provided in the criminal law, committed in guilt, unjustified, and imputable to the wrongdoer. The imputable character of an act is equivocal, because the notion of imputability has different meanings within the doctrine. Irrespective of the way in which we would understand the notion of imputability (imputability viewed subjectively or objectively), it is easily noticeable that imputability is included – explicitly or implicitly – in the definition of the offence: an act provided in the Criminal law, committed in guilt, without justifying causes.

Concerning the common legal subject of offences concerning the protection of the environment in the doctrine, the question was whether the implication of criminal law in this matter was meat to protect nature as a whole or just the individual's right to a healthy environment.

The evolution of regulations in the field of environment protection enables us to posit that the social relations meant to protect the environment, its constitutive elements and its factors – among which man (his health or his possessions) – represent the general legal subject of these offences. Obviously, the protection of the individual right to a healthy environment is possible through environment protection as a dominant factor. For that matter, most offences concerning the protection of the environment have a complex legal subject, which includes the protection of people's health, possessions and of the interests of the society.

Regarding the active and passive subject of offences concerning the protection of the environment, whereas in the case of natural entities as active subject of the offence, there is unity concerning the general conditions of criminal liability, things are more complicated when it comes to the criminal liability of legal entities.

On principle, after inuring the Law No. 278/2006, legal entities are criminally liable for any offence regulated by the criminal law, irrespective of the type of guilt corresponding to their act. The concrete circumstances and the nature of the offence will determine the capacity in which the legal entity committed the act. This idea was preserved in the new Criminal Code. Obviously, there are offences that, by their nature, cannot be committed by legal entities, but it does not prevent a legal entity to be an accessory or an instigator to committing an offence. It is worth mentioning that Recommendation (88)18 of the European Council posits that its area of application concerns all private or public companies, considered legal entities, for all acts related to the practice of their economic activity.

As in the case of criminal policy, States oscillate between stating as offences only acts that actually alter the environment by bringing quantifiable damage and criminalizing the same acts even when they only endanger the quality of environmental factors. The scientific literature has underlined that, in the protection of the environment, States should stipulate mainly endangering offences. It is also worth noting – as a characteristic of protection of the

environment – the prohibition of behaviours seen as preparatory actions. This manner of criminalisation – by creating "obstacle offences" – corresponds to the specificity of environment protection because it focuses on ensuring the anticipated protection of protected value instead of punishing an act already committed.

In the conditions of current criminal regulations, criminal liability for the breach of legal norms on the protection of the environment has certain particularities depending on the nature of the protected subject and on the specific of consequences of the acts. Administrative regulations remain the essential element for the protection of the environment; in case of offences concerning the protection of the environment, many indictments actually criminalize breaches of administrative norms; however, there has been a reconsideration of the position of criminal law as a weapon against ecological criminality. Certain acts committed in this field are considered offences with high degree of social danger; under certain circumstances, their characteristics include them into the category of very serious offences pertaining to organized crime and international terrorism.

As for determining causality, the specificity of ecological causality has been proven more difficult to integrate within juridical causality, because pollutions are usually diffuse and late, they are able to complete each other and they can affect very long distances. In these conditions, causality may not be direct and immediate or the act may not be the only cause of the damage. In case of material offences, criminal doctrine posits that the theory of equivalence of conditions provides the most possibilities for solving causality relation, by determining correctly the sphere of contribution with the causality relation. We believe that this theory is the most appropriate for the specificity of criminality in the matter of environment protection.

Section II. Offences concerning the protection of the environment stipulated in the criminal law

Just like the old Criminal Code, the new law fails to dedicate a special title to offences concerning the protection of the environment; they are mainly regulated by Special laws. The mention of offences of non-compliance with the legal treatment of nuclear material or of other radioactive materials (Article 345 of the Criminal Code), non-compliance with the legal treatment of explosives (Article 346), spreading disease among animals or plants (Article 355), contamination of water (Article 356), and toxic products or substances trafficking (Article 359) ensure environment protection indirectly.

Section III. Offences concerning the protection of the environment regulated by GEO 195/2005

Government Emergency Ordinance No. 195/2005 is the framework regulation in the matter of environment protection. According to provisions under article 1 of the regulatory document, the emergency ordinance focuses on a set of legal regulations on the protection of the environment – a major issue of public interest – based on the principles and strategic elements leading to sustainable development. Chapter XV – entitled Penalties – mentions, under article 98, twenty offences concerning the protection of the environment.

It is worth underlining – as a characteristic of offences concerning the protection of the environment – the legislator's option of criminalizing actions that are potentially dangerous to the environment only if they endanger human, animal, or vegetal life or health; hence, the offences are formal, they concern the danger. For the existence of offences, it is not necessary for the state of danger to turn into a concretely harmful outcome. However, is such an outcome does occur, there is a formal case of multiple offences: the danger offence provided in the Special law and an ordinary offence, depending on the harm done or the actual damage.

We analyzed the aspects specific to trials, focusing on determining and investigating offences ex officio by criminal inquiry bodies, according to legal jurisdiction. We also analyzed the obligation imposed to commissioners with the National Environment Guard,

with the National Commission for the Control of Nuclear Activities, to guards and personnel within the Ministry of National Defence of informing immediately the competent inquiry body according to the criminal procedure law about any of the offences provided under Article 98 of the ordinance. Within this section, in the second subsection, we analyzed each of the offences provided in the ordinance.

Section IV. Offences provided in Law 101/2011 for preventing and sanctioning environmental degradation acts

Law 101/2011 for preventing and sanctioning environmental degradation acts is a Special law that comprises penal provisions concerning acts prejudicing the environment. The Law transposes Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law, published in Official Journal of the European Union No. L 328 of 6 December 2008 and it regulates – under articles 3-11 – offences concerning the protection of the environment, in an attempt to "determine penal measures meant to ensure a more effective protection of the environment".

The offences provided in the law can be committed by both natural and legal entities, because the indictment norms fail to qualify the active subject of the offences. Concerning the objective aspect, various behaviours are criminalized: the Law incriminates acts that affect the environment by possible pollution with waste (Article 3 and 4), with dangerous substances (Article 5), radiating substances (Article 8), as well as the regime of natural protected areas, the conservation of natural habitats, of wild flora and fauna (Article 6 and 12). Criminalized behaviours are those by commission. The offences provided in the law are formal offences. From the perspective of the subject, the acts criminalized by the provisions under articles 3-8 are penalized even when they are committed by negligence; articles 10 and 11 criminalized the acts provided under Article 271 of Law No. 86/2006 concerning the Romanian Code of Customs and the acts stipulated under Article 52 paragraph (1) subparagraphs c) and d) within Government Emergency Ordinance No. 57/2007, approved with amendments and additions by Law No. 49/2011, committed by negligence. Preparatory acts and attempts to the offences were not criminalized.

From a procedural perspective, the Law does not include norms that are derogatory from the common law. The provisions of article 13 of the republished Law comprise the obligation of notifying the criminal inquiry bodies about the commission of offences provided in the law; hence, any person who witnesses – while exercising his/her legal duties – an offence provided in Law 101/2011 has the obligation of notifying immediately the criminal inquiry bodies.

This section analyzed the offences regulated by Law 101/2011.

Concerning the manner of transposing Directive 2008/99/EC, it is worth highlighting that the national legislator chose to integrate the contents of the directive in the national legislation, without even trying to adapt it to the existing legislation in the matter. For this reason, the same illicit behaviour – if committed with intent – is considered an offence by a law, and if committed by negligence, the legal classification of the act takes into account Law 101/2011.

Section V. Offences regarding the safe deployment, regulation, authorisation, and control of nuclear activities

Law 111/1996 republished and amended comprises – in articles 44-46 – eighteen offences concerning environment protection.

We also mention that, in the provisions of Article 44 paragraph 1 subparagraphs a) and b), there are 12 special offences, corresponding to the legal provisions violated. This aspect results from the way article 44 paragraph 2 was drafted, which refers to the offences, not the offence, provided in paragraph 1 subparagraph b), or, if the legislator had intended to regulate a unique offences with complex alternative content, she would have referred to it as to a

unique offence. In addition, the acts mentioned under Article 44 paragraphs 1 and 2 referring to Article 2 subparagraphs a – i, 24 paragraph 1, 28 paragraph 2, and 38 paragraph 1 are distinct acts by their nature, reason for which they cannot make up a complex offence. As for the legal disposition provided under Article 45, it regulates, in its turn, five distinct offences: the one provided in paragraph 1, which criminalizes the act committed with intent, and the one within paragraph 2, which mentions the offence by negligence, as well as the versions provided in paragraphs 3, 4 and 5, each with distinct penalties. Taking into account that the distinct penalty provided by the legislator represents a fundamental criterion for determining the existence of the offence, the conclusion is the one mentioned above: five distinct offences are regulated under article 45.

Concerning the trial-specific aspects, it is worth mentioning the criminal inquiry and trial jurisdiction of the Directorate for the Investigation of Offences of Organized Crime and Terrorism, according to provisions under Article 12 paragraph 1 subparagraphs b) point iii of Law no. 508/2004 on the setting up, organization and operation within the Public Ministry of the of the Directorate for the Investigation of Offences of Organized Crime and Terrorism, as it was amended by GEO 3/2014. The control bodies in the field, as they are provided in Annex 3 to the law, have the attribution of notifying the criminal inquiry bodies, in case of infringements of legal provisions in the matter. Concerning seizure, Law 111/1996 includes, under Article 52, a specific provision, concerning nuclear and radiological installations, their components, nuclear fuel, radioactive products, including radioactive waste, explosive nuclear devices or their components, which have been subject to special seizure by judicial decision, under the terms stipulated in the criminal law. The Article stipulates that, if they were seized in the conditions provided in the criminal law, they shall be retained at the expense of the former owner, in a safe place, under the seal of public authorities, until the lawful measures regarding it are taken.

This section also comprises a distinct analysis of each offence provided in the Special law.

Section VI. Offences provided in Law 211/2011 regarding waste management

The law transposes in the national legislation the Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directive; it includes six offences concerning waste regimen.

The texts of laws do not state the active subject of offences, reason for which any person may have the capacity of active subject of offences regarding waste management. In some cases, the offence can only be committed by persons with duties in the field of waste management, such as the offence of not taking or not respecting mandatory measures during the activities of collection, transport, treatment, and disposal of hazardous waste. I also mention the offence committed by operators of storages/incinerators, such as the offence of accepting, for disposal purposes, waste introduced illegally in the country and/or waste introduced in the country for other purposes than disposal and that could not be used for their initial purpose.

The offences are formal; they do not require the existence of damage per se, of a concrete harmful outcome. The immediate consequence of all the offences regulated by the law is the state of danger created by committing the acts, which represents the material prejudice brought to the environment. The subjective aspect of offences consists in guilt expressed by direct or indirect intent. Because the legislator failed to state expressly that acts by negligence do represent an offence, it results that the offences provided in Law 211/2011 must include intent. Attempt is possible in case of offences by commission, and it is punished in case of the offences analyzed here; the legislator posits that attempt also comprises the degree of danger necessary for indictment.

Such an offence is committed when it entails a state of danger for the environment. Activities not resulting in the death, damage to the corporal integrity of a person, or environment degradation will lead, in all cases, to the application of norms concerning recurrent offences. Some of the criminalized acts are recurrent by nature and they are susceptible of being committed on an ongoing basis.

The analysis of the content of offences provided in the law was conducted within the section

Section VII. Offences provided in Law 86/2008, the Forest Code

The national forest fund is defined under the Article 1 in the Forest Code as all forests, afforestation of land, those that serve the culture, production or administration forest, ponds, streams and river beds, and other lands under forest and unproductive forest management plans contained in the January 1 1990 or later incorporated therein, under the law, regardless of ownership**.** Conservation of biodiversity of forest ecosystems implies measures of sustainable management and it imposes an adequate and efficient – including penal – protection**.**

Forest offences are material offences; the offender's action damages the national forest fund or the elements comprised within the forest fund: forests, land, water bodies, trees, seedlings, cuttings, junipers, wood vegetation, etc. Analyzing the material element of forest offences is of interest from the perspective of correct legal classification of the act, depending on the material element prejudiced by the illegal act: for instance, there are differences between the offence of theft provided under Article 228 of the criminal law and the offence of theft provided under Article 110 of the Forest Code; one of them is determined precisely by the material object. Furthermore, the offence of destruction provided in the criminal law under Article 253 of the Criminal Code has as material object a possession of another person, while the offence of wood material destruction criminalized under Article 108 of the Forest Code concerns the trees, seedlings or cuttings of the forest fund.

Generally, the active subject of forest offences can be any natural entity that meets the requirements of the law: age, liability, freedom of will and action. It is worth noting that, concerning the offence of wood material destruction (Article 108 of the Forest Code), the active subject of the offence can also be the owner of the forest fund. The purpose of the regulation is to protect the national forest fund from cutting, tearing, destruction, damage or removal of roots, without right, the trees, seedlings or cuttings from national forest and the forest vegetation located on land outside of it, regardless of ownership. Concerning the offence of wood theft, provided under Article 110 of the Forest Code, we posit – along with several other authors – that the owner cannot be the active subject of wood theft offences, but only of destruction offence, according to the provisions under Article 108 of the Forest Code.

If the active subject has the capacity of "forestry personnel" and he/she commits one of the offences provided under Article 108 or 110 of the Forest Code, it represents an aggravated, not a simple offence. Furthermore, the active subject is circumstantiated if he//she commits the offence provided under Article 108 paragraph 1 subparagraph b) or under Article 110 paragraph 1 subparagraph b). In these two cases, is the value of the damage is below the criminalization limit provided in the law, but the author commits at least two similar acts within a year, there is sufficient evidence for the offence. In other words, the active subject of these offences can be a person who received a civil sanction and, within a year, she/she commits a second similar act, and the cumulated value of the prejudice is at least five times bigger that the average price of a cubic meter of wood of standing timber on the date of the offence.

The passive subject of forest offences is the State, as owner of protected values through criminal law. As the owner of the national forest fund and as the institution entitled to ensure a healthy and balanced environment, the State is the main passive subject in all

categories of forest offences. Depending on the concrete illicit action, in case of forest offences, there are secondary passive subjects, such as the owner of a forest fund representing private property.

The forest offences, as they are regulated under Articles 106-114 of the Forest Code, are offences by commission and, most of them, material offences. The criminalization manner – related to the value of the prejudice and to determining it through an administrative act – has often been criticized in terms of legality of criminalization. The Constitutional Court rejected the exceptions of de unconstitutionality of Articles 108 paragraph 1 subparagraph b) and 110 paragraph 1 subparagraph b) within Law 46/2008, because they do not contradict the constitution.

The average price of a cubic meter of wood of standing timber was determined by the Order of the Minister delegated for waters, forests, and fish culture No. 76/2014 published in the Official Gazette 121 of 18 Feb. 2014, to the value of 101 lei. The order was going to inure 30 days from the date of publication: 18 March 2014. However, Order 118/2014 published in the Official Gazette on 4 March 2014 repealed it, considering the provisions under Article 202 point 8 within Law 187/2012. According to the amendments brought to Law 46/2008, the average price of a cubic meter of wood shall be determined annually, upon the proposition of the central public authority in charge with forestry (Article 123 of Law 46/2008 amended). Until the law on the average price of a cubic meter of wood of standing timber passes, we are witnessing a legislative void, because the repealing of Order 76/2014 did not reactivate the old order, which mentioned the average price of 85 lei.

Attempt is criminalized only in case of the offence provided under Article 108 of the Forest Code. We have noticed that, in certain drafting versions, the non-criminalized attempted wood theft offence actually represents a consumed offence of wood destruction (e.g., cutting down trees without entering in their possession).

Forest offences are consumed when the criminalized act produces the immediate consequence provided by the legislator. The offences are susceptible of being committed on an ongoing basis, with a moment of depletion. Concerning the unlawful cutting of wood, followed by taking them into possession, committed by the same author, opinions are not unanimous. Hence, according to certain opinions, they are qualified both as the offence of wood destruction provided under Article 108 and as wood theft provided under Article 110 as recurrent offences. According to other opinions, the legal classification of the act must concern exclusively the offence provided under Article 108 of the Forest Code, because unlawful woodcutting includes subsequent possession, which makes it an offence with complex content.

The criminal action investigation in case of forest offences is done ex officio. Article 117 of the Forest Code states that, in addition to law enforcement officials, are empowered to find the facts stipulated under art. 106-113 forest staff within the central public authority responsible for forestry and its territorial structures with specific forestry, forest staff in the National Forestry and its territorial structures, forestry staff within authorized private forest districts and authorized personnel of the Romanian Gendarmerie, in the conditions of Article 61 of the Criminal Procedure Code. These competent bodies are entitled to identify and inventory – where they find it – the wood constituting the subject of potential forest offences. The forestry personnel authorized to establish these offences will retain the wood. In case of prejudice due to acts considered offences, the person authorized to establish this will submit the report on findings to the unit or institution in which he/she operates; the head of unit or institution will submit the report on findings to the prosecutor's office attached to the court with jurisdiction in the matter.

The analysis of offences provided in the Forest Code is comprised in subsection 2.

Section VIII. Offences provided in Law 407/2006 on hunting and the protection of cynegetic fund

Law 407/2006 regulates hunting and the protection of cynegetic fund; the fauna of a cynegetic interest is a renewable natural resource, a public asset of national and international interest. The Special law regulates seven special offences, under Articles 42-44.

The active subject of offences concerning the protection of cynegetic fund can be any natural entity that meets the requirements of the criminal liability. Considering the characteristics of offences regulated by law, we posit that offences provided under Articles 43 and 44 do not include the criminal liability of legal entities; poaching is specific to natural entities, but it is not excluded for legal entities to commit the offences regulated by Article 44. Under certain circumstances, the special capacity of the author (e.g., with duties in the field of hunting, as well as the representatives of legal entities which activity includes the protection game or hunting) entails the qualified character of the common offence (Article 42 paragraph 2 subparagraph a).

The passive subject of offences within Law 407/2006 is the State, as owner of the protected value, because the national cynegetic fund is a public asset of national interest; the State also has the obligation of ensuring the protection of the national cynegetic fund. The manager of the cynegetic fund affected by the offences represents the secondary passive subject.

The objective aspect of offences provided in the law is as follows: the offences provided in the law are offences by commission; the material object of offences is hunting animals, transporting them, using weapons otherwise than in the conditions provided in the Special law. The immediate consequence is the degree of danger created by committing the criminalized acts; a concrete material outcome is not necessary for the existence of the offence. The subjective aspect of offences regulated by the law involves guilt as intent, which can be direct or indirect. Concerning the offence of poaching, practice has shown that it is exclusively committed with direct intent, because the offender is aware of the consequences of his actions. The law does not punish attempt. Moreover, within the offence of poaching, considering the meaning of the notion of hunting, according to the provisions under Article 1 subparagraph u) within the law – "lurking, searching, stirring up, following, hounding, or any other activity meant to capture or kill members of the species provided in Annexes No. 1 and 2, which are free" – even preparatory acts are included in the content of the consumed offence.

The law does not include special provisions concerning the jurisdiction of criminal inquiry bodies or of courts for offences regarding the cynegetic fund of our country. The offences under Articles 42-44 can be notified – besides criminal inquiry bodies – by the staff members with duties in the sphere of protecting the game the central public authority in charge with forestry, the central public authority in charge with environment protection and cynegetic fund management, as well as any other members of the specialized staff given such duties by the head of the central public authority in charge with forestry, persons assimilated – in their practice of the duties deriving from their entitlement – to the personnel with a function in the sphere of public authority. The provisions under Article 46 comprise a special norm on the safety measure of confiscation: the assets used to commit the offences provided under Articles 42-44 will be confiscated, alongside the hunting trophies and the game. A special safety measure is provided under Article 47 of the law: the person who committed one of the acts provided under Articles 42 and 43 will have the hunting permit taken and annulled, according to the law. Concerning the civil side of the criminal trial, Law 407/2006 includes the manner of establishing the damage claim for the offences provided in the law, within Annexes 1 and 2 to the law; the payment method is included in the provisions under Article 51.

Within subsection 2, we analyzed the offences regulated by Law 407/2006 on hunting and the protection of cynegetic fund.

Section IX: Offences provided in Government Emergency Ordinance No. 57/2007 regarding the regime of natural protected areas, conservation of the natural habitats, wild flora and fauna

The legislative document transposes in the national legislation the provisions Of Directive 79/409/EEC on the conservation of wild birds and of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora. It also creates the institutional framework for the application of Council Regulation (EC) No. 348/81 on common rules for imports of whales or other cetacean products, of Council Regulation (EC) No. 3254/91 prohibiting the use of leghold traps in the Community and the introduction into the Community of pelts and manufactured goods of certain wild animal species originating in countries which catch them by means of leghold traps or trapping methods which do not meet international humane trapping standards, and of Council Regulation (EC) No. 338/97 on the protection of species of wild fauna and flora by regulated trade therein.

Under Article 52, the ordinance regulates nine offences concerning environment protection, specific offences, which punish illicit acts that prejudice the conservation of the natural habitats, wild flora and fauna. We believe that Article 52 of the Ordinance regulates distinct offences, through the text of the law mentions a unique offence: "committing the following acts… represents an offence and it is punished". We support this opinion considering the content of "commission versions," which do not have common elements, but they represent distinct activities, which protect different values. The unique penalty provided in the law for all criminalized acts is not a sufficient argument for the unique character of the offence, because the act provided in the Criminal law, committed in guilt, unjustified, and immutable to the wrongdoer represents an offence. In numerous other cases, the legislator did similar regulations, by establishing the same penalty for distinct offences within the same article (Article 98 of GEO 195/2005 on the protection of the environment, Article 64 of GEO 23/2008 regarding fishing and aquaculture are only two of the numerous examples in this sense).

Within subsection 2, we analyzed the offences provided in Government Emergency Ordinance No. 57/2007 regarding the regime of natural protected areas, conservation of the natural habitats, wild flora and fauna.

Section X. Offences provided in Law 107/1996, Water Law

Water represents a renewable, vulnerable, and limited natural resource, an element indispensable to life and to society, raw material for productive activities, source of energy and transportation mean, and determining factor for ecological balance. Water is not just another trade product, but a natural patrimony that needs to be protected, treated, and defended as such. Water is included within the public domain of the State. Identifying protecting, valuing, and using water resources in a sustainable manner are actions of a general interest.

Therefore, the need to protect waters, including through criminal law rules, becomes apparent. Water Law is a Special law that also includes criminal provisions: the criminalization rules are provided under Articles 92-95.

The objective aspect of offences regarding waters are represented by various actions that endanger the quality of waters and banks, or that result in pollution. The immediate consequence of all the offences provided in the law is the alteration of water quality. Causality must exist and it must be proven.

The subjective aspect of offences provided in the law depends on the texts the law. Therefore, in case of offences regulated by the provisions under Article 92 paragraphs 1 and 2, 93 paragraphs 1 and 2, 95 paragraphs 1 and 2, the subjective aspect is represented by guilt

exclusively with intent. However, in the offences provided under Article 92 paragraph 4, 93, paragraph 3, and 95 paragraph 3, the subjective aspect is guilt exclusively by negligence.
As for pursuing the proceedings, Article 106 of the Water Law stipulates that the offences provided in this law shall be ascertained by the authorized bodies, as well as by the personnel provided for in Art. 90 (a. the inspectors from the Self-Managed Public Company "Romanian Waters"; b. the general manager of "Romanian Waters" and managers of the basin branches belonging to the Self-Managed Public Company "Romanian Waters" and their empowered employees; c. other persons empowered by the Ministry of Waters, Forests and Environmental Protection; d. the inspectors with the environmental protection Agencies), who shall submit the recordings to the local authority for penal investigation.

The analysis of offences provided in Law 107/1996 is comprised within subsection 2.

Section XI. Offences provided in Government Emergency Ordinance No. 23/2008, regarding fishing and aquaculture

Government Emergency Ordinance No. 23/2008, regarding fishing and aquaculture, is a Special law that comprises, under Articles 64 and 65, 14 offences regarding the conservation, management and exploitation of live aquatic resources, as well as the processing and trading of fishing and aquaculture products.

The offences regarding the protection of fishery fund are offences by commission; their material element is represented by acts connected to fishing, which bring prejudice to the conservation, management and exploitation of live aquatic resources, as well as to the processing and trading of fishing and aquaculture products. The immediate consequence of offences is the alteration of national fishery fund or the degree of danger concerning its sustainable development. Causality between the material element of offences and their immediate consequence must exist and it must be proven.

The offences regulated by this ordinance can be committed in guilt as intent, both direct and indirect. Acts committed by negligence are not criminally relevant, and the legislator does not criminalize acts committed by negligence.

Most regulated offences are instantaneously consumed offences, because they are consumed when the act representing the material element is committed. They may be committed on an ongoing basis, such as fishing, which does imply a continuous activity, which also involves a depletion of the illicit act. In case of offences provided under Article 65, the law also criminalizes attempt.

The offences regarding fishery and aquaculture regimen belong to the jurisdiction of prosecutor's offices and of common courts; there is no derogatory provision is this sense. According to the provisions under Article 67 of GEO 23/2008, besides criminal inquiry bodies, persons entitled to notify the offences provided under Articles 64 and 65 include the inspectors with the National Agency for Fishing and Aquaculture, with the National Environmental Guard, and with the "Danube Delta" Biosphere Reserve Authority. In addition, the Law stipulates special provisions on confiscation.

As for penalties, for all the offences provided in the law, there is also the penalty of suspending the fishing permit; this sanction is mandatory, for each of the offences provided in GEO 23/2008, according to the provisions under Article 67 paragraph 2 of the Criminal Code.

Subsection 2 comprises the analysis of offences provided in GEO 23/2008 regarding fishing and aquaculture.

Section XII. Offences provided in Law No. 173 of 10 October 2008 on active interventions in the atmosphere

Law 173/2008 – alongside Law 108/2011 – ensures the protection of air, as an element of the environment, from potentially harmful activities conducted by humans. Active interventions in the atmosphere – though conducted for benefits and even while trying to

avoid the occurrence of natural disasters – represent potentially harmful activities, reason for which it is imperious to draft detailed regulations concerning their occurrence.

In case of the acts criminalized by the law as offences committed within the frame of activities of an organized group, the active subject is usually someone qualified, such as system operators, economic operators, etc. The objective aspect of the offences is characterized by a diversity of criminalized behaviours. The law punishes both offences by omission and by commission. The offences analyzed here are exclusively formal offences, reason for which their immediate consequence is the degree of danger on the environment; there must be causality between the committed offence and the immediate consequence that will result ex re. For the existence of offences, it is not necessary for the state of danger to turn into concrete situation. However, should such a situation occur, there will be a case of ideal and formal overlapping of offences between the offence of danger provided in the Special law and a common offence, depending on the actual injury or damage. The subjective aspect of offences is represented by guilt as direct or indirect intent; the legislator does not punish acts committed by negligence. Offences are consumed when the commission of criminalized acts produces a degree of danger for environment; most offences are consumed instantaneously. However, many of the offences are recurrent by their very nature or practice has shown they are committed on an ongoing basis; the depletion of the offence coincides with the cessation of activity. The penalty stipulated by the legislator for the offences provided under Article 101 paragraph 1 in the law is imprisonment from 3 months to 2 years or the payment of a fine; for the offences provided under Article 101 paragraph 2, the penalty is imprisonment from 1 to 5 years.

According to the provisions under Article 104 in the law, the inquiry of offences provided under Article 101 is the duty of criminal inquiry bodies, with the help of active interventions from the administration personnel. The latter have the obligation of requiring the competent bodies to inquire the acts considered offences.

In subsection 2, we conducted an analysis of offences provided in the law.

CHAPTER VI. CONCLUSIONS

Section I. Aspects of comparative law on the protection of the environment through criminal law means

The way in which the countries of the European Union regulated environment protection through criminal law provides useful information for our analysis. The experience of the other European States offers useful clues in the path toward ensuring an effective protection of the environment in Romania. Within this section, we presented the legislation of countries such as Belgium, Finland, France, Germany, and Sweden in the field of environment protection through criminal law rules.

Section II. Elements of criminology and victimology of the environment

Criminology of the environment seeks to establish the existence patterns that trigger criminal behaviour and to determine ways to prevent it. It has been established that criminal markets emerge, develop, and persist in specific geographic places, possibly related to the nature of rules into force and the social behaviour correlated with the types of environment where it occurs. Recent works have studied green criminology – criminological research focusing on the study of acts related to injuries brought to the environment (causes, manifestations, and ways to prevent, mitigate, and combat them). Green criminology proposes to study the notions of environment and damage, of the offence against the environment, and of the causes that determine offences or damages to the environment. The right to environment is seen as an extension of social rights; in addition, the individual is regarded as an integrant part of the environment, part of a complex ecosystem that needs protection. After analyzing the concept of offence against the environment, the authors pinpoint the necessity

of extending its meaning to behaviours that are authorized and allowed, but that have a harmful effect upon the environment. Within the development of green criminology development, a new concept emerged and developed – ecoglobal criminology, which analyzes the cross-border effects of potentially harmful behaviours toward the environment. The emergence and development of new concepts in criminology led to a new approach to the concept of victim.

In the 21st century, criminal victimization has become an important field of study. In many ways, ecological victims are distinguished among "real, complex, contradictory, and often politically uncomfortable victims". The analysis of this type of victim is particular also because, many times, the activity causing damage to the environment derives from legal, economically and/or politically justified activities. In addition, the high functions of persons who cause damage to the environment determine a trend of rejecting the idea that their activity should be limited, thus inoculating the idea that imposing behaviour rules would be to the detriment of everyone. The social approach to victimology led to the creation of environmental justice, defined as a broad concept focusing on the implication of people and community in decisions with a potential significant impact upon the environment, for the inclusion of their rules, values, regulations, and cultural behaviours. Though the approach to ecological victimology is still at the beginning, the necessity of this field is apparent. The analysis of ecological victimization also underlined the need to extend the notion of victim and to approach the issue of long-term victimization, as well as the need to include pollution acts and omissions to act concerning activities entailing victimization.

Section III. Conclusions, propositions de lege ferenda

By analyzing the criminal legislation in the field of environment protection, we posit that, on principle, it is able to fulfil the role of preventing and the acts that breach the rules protecting the elements of the environment, as well as the environment as a whole.

The experience of Romania is not much different from that of other European States, as shown by the analysis of regulations in the field, pertaining to other States. The existence of repressive regulations in the matter is not sufficient for attaining the proposed goal – adequate protection of the environment; it is necessary to apply them efficiently.

In our opinion, concerning the offences regulated by Government Emergency Ordinance No. 195/2005, Article 2 of the ordinance should be completed, by including the notion of ecological restoration. We propose the following definition for the notion of ecological restoration: "set of operations conducted with the purpose of restoring completely the components and processes of a damaged site or ecosystem and the restoration of ecological balance". Concerning the offence regulated by the provisions under Article 98 paragraph 2 subparagraph d), we propose the elimination of the condition of "endangering human health". We believe that the act should be criminalized if "it endangered the human, animal, or vegetal life or health", irrespective of whether it endangers seriously the human health. Article 98 paragraph 3 subparagraph b) of the GEO 195/2005 should be amended, in the sense of cutting the final part: "introducing on the Romanian territory any type of waste with the purpose of disposal". Introducing on the Romanian territory any type of waste with the purpose of disposal represent an offence, irrespective of whether it does or does not bring prejudice to the environment. We propose a legislative intervention concerning the provisions under Article 98 paragraph 4 subparagraph d) of the GEO 195/2005, in the sense of eliminating the condition of causing pollution wilfully.

In the matter of forestry, we propose the intervention of the legislator for clarifying the provisions under Article 110, which regulate the offence of theft. Though a new legislative amendment took place in 2012 concerning the same Article, the legislator maintained the criterion of value: the act is an offence only if the value of the wood stolen is at least five times bigger that the average price of a cubic meter of wood of standing timber, though the

theft of any other good is criminalized, irrespective of its value. In addition, the test of the law into force does not indicate the date of reference for establishing the value of the prejudice, for all conditions of an offence to be met. We believe that the elimination of ands from the forestry circuit should be reduced drastically, considering the vast surfaces that have been deforested in Romania during the last decades. Therefore, maintaining the possibility of changing the destination of forestlands for the construction of dwellings or vacation houses will not reduce, but it will accentuate the rhythm of deforestations, already alarming in Romania. Sweden prohibited tree cutting completely until 2010, considering the alarming rhythm of deforestations; the country established, after 2010, a controlled regime of forest exploitation after this period of prohibition. This is a very good model, which Romania could follow.

In the matter of offences provided in GEO 52/2007, as it was amended by Law No. 187/2012, we believe that Article 52 should be amended as follows: from "the following acts represent an offence and the penalty is imprisonment from 3 months to 1 year or the payment of a fine" to "the following acts represent offences and their penalty is imprisonment from 3 months to 1 year or the payment of a fine".

The level of penalties provided by the national legislator intern – concerning both the offences provided in Law 407/2006 on hunting and the protection of cynegetic fund and those within GEO 23/2008 regarding fishing and aquaculture – are too mild for their punitive purpose. The trade of prohibited species has reaching alarming levels lately; one of the causes is the significant profit of activities related to the low risk of repression; the penalties provided in the legal provisions do not lead to the prohibition of criminal behaviour.

We also believe it is necessary to integrate the offences regulated by Law 101/2011 into the special laws that regulate waste regimen: Law 211/2011, GEO 57/2007, and Customs Code. The purpose is to change the current legislative situation, where the act with intent is regulated and punished within a legislative document, while the act committed by negligence is part of a different document; this situation occurred after Law 101/2011 passed.

Beyond these desirable legislative amendments, it is worth underlining that the repression of criminal phenomenon in the matter of environment protection is not one of the most effective ones. Therefore, though there exist many criminalized harmful acts against the environment, there are statistical data that confirm the existence of criminal phenomenon and the way of repressing it only in the case of forest offences. In the case of all the other offences, such data are not available.

We posit that it would be extremely useful – when elaborating the rules of criminal law in the matter – to take into account the conclusions elaborated by the specialists in the field of environmental criminology and victimology. Understanding the criminal phenomenon in the matter and the implication of the behaviours included in the illicit environmental sphere upon the individuals – and mostly upon the society as a whole – will lead to the elaboration of coherent and efficient policies, including legislative policies.

In addition, it would be easier to discover and instrument offences in the matter of environment protection by creating specialized bodies in the field of environment protection within criminal inquiry institutions and within prosecutor's offices.